

Formica



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Specialty Plastics Products, Inc.

File: B-237545

Date: February 26, 1990

Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.
Ruth E. Ganister, Esq., Rosenthal & Ganister, for the interested party, Halsey, Inc.
Suzanne McKenna, Esq., Defense Logistics Agency, for the agency.
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's actions in authorizing second year of multiyear contract and canceling second year of protester's multiyear contract for the same item, is dismissed since the agency's actions involved matters of contract administration not reviewed by the General Accounting Office.

DECISION

Specialty Plastics Products, Inc. protests the acquisition of combat vehicle crewman helmets by the Defense Personnel Support Center (DPSC), Defense Logistics Agency, under the second program year of multiyear contract DLA100-89-C-4219, awarded to Halsey, Inc. on July 28, 1988.

We dismiss the protest.

DPSC issued request for proposals (RFP) No. DLA100-86-R-0725 on August 11, 1987, for the acquisition of 157,830 helmets, representing the agency's projected annual requirements for fiscal years 1986 through 1989. As the helmets are a planned item under the Department of Defense Industrial Preparedness Program, the procurement was restricted to planned producers under authority of 10 U.S.C. § 2304(c)(3) (1988). The RFP contemplated the award of three separate multiyear contracts and specified that no

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offeror could be awarded more than one of the contracts in order to provide for an adequate production base in the event of mobilization. The first contract was to include approximately 70 percent of the agency's total requirement (109,830 helmets), with the second and third contracts each to include approximately 15 percent of the agency's requirement (24,000 helmets per award). The solicitation provided that in the event that low offeror on the first contract was also the low offeror on the second or third contract, that offeror would be awarded the first contract and the remaining awards would go to the next low offerors, provided that prices were fair and reasonable.

The multiyear contracts were to be performed over 2 program years, with 50 percent of the helmets being furnished each year. In accordance with Federal Acquisition Regulation (FAR) § 17.102-2(b), the RFP informed offerors that funds were available for the first program year only. Also, the RFP stated that upon the availability of funds for the second year, the contracts would be modified accordingly and, if funds were not available to support the second year's requirement, the agency would cancel the contracts.

Specialty was the low offeror on all three contracts and was awarded contract No. DLA100-88-C-4217 for the first quantity at a price of \$182.20 per helmet. Accusonic Systems Corp. was awarded contract No. DLA100-88-C-4218 for the second quantity at a price of \$205.89 per helmet, and Halsey was awarded contract No. DLA100-88-C-4219 for the third quantity at a price of \$227.11 per helmet. In accordance with the solicitation, each of the contracts included a provision whereby the second program year portion automatically would be canceled 360 days after award unless the government notified the contractor that funds were available for the second year. Prior to the cancellation date, the agency requested each of the contractors to agree to an extension of the cancellation date. While Specialty and Halsey agreed to extensions until October 1989, Accusonics declined, thus allowing its contract to expire.

In September 1989, the contracting officer was advised that, based upon a revised requirements study, the agency's need for the second program year totaled only 12,066 helmets rather than the original quantity of 78,912. Since, according to the agency, Specialty's contract included a second program year quantity of 54,912 helmets, not 12,000, and Accusonic's contract had been canceled, the contracting officer authorized performance of the second program year of Halsey's contract for 12,000 helmets, and allowed the second program year of Specialty's contract to expire in accordance with the cancellation clause in the contract.

Specialty argues that the agency's decision to authorize performance on the second year of Halsey's contract and cancel the second year of Specialty's contract was either a modification of both contracts or the exercise of an option under Halsey's contract and in either case was tantamount to an improper sole-source award to Halsey. Specialty contends that because it was the original low offeror on all three of the contracts, the agency was required to purchase its second year quantity from Specialty or issue a new competitive solicitation for the second year requirement since a price lower than Halsey's contract may be obtainable.

The agency's authorization of the second program year of Halsey's contract and cancellation of the second program year of Specialty's contract are matters of contract administration. Generally, this Office lacks bid protest jurisdiction to review matters of contract administration which are within the discretion of the contracting agency for review by a cognizant board of contract appeals or a court of competent jurisdiction. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1989); see also Condotels, Inc. et al., B-225791 et al., June 30, 1987, 87-1 CPD ¶ 644. We will consider, however, situations where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement. CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364. Also, we will consider a protest of the exercise of an option when the protester contends that such action is contrary to applicable regulations. Bristol Electronics, Inc., B-193591, June 7, 1979, 79-1 CPD ¶ 403. Additionally, we review contract terminations where the agency's basis for termination is that the contract was improperly awarded. Condotels, Inc. et al., B-225791 et al., supra.

None of these exceptions applies to the agency's actions in this case. The cancellation of Specialty's contract was based on the agency's determination that the quantity called for in the second year of the contract was not required and the fact that funds were not available for the second program year of the contract. The cancellation involved the exercise of the agency's right under Specialty's contract to cancel the second program year. Specialty's contract was not modified or terminated and thus the protest is not reviewable on those bases. To the extent that Specialty is arguing that the cancellation was improper, as stated previously, a cognizant board of contract appeals or a court of competent jurisdiction is the proper forum for review of the agency's action.

With regard to the agency's authorization of the second program year of Halsey's contract, there is no indication in the record that Halsey's contract was modified to increase its scope. The agency merely authorized the second program year as provided by Halsey's contract. We therefore reject Specialty's contention that the authorization constituted an improper modification of Halsey's contract, and accordingly will not review the agency's action on that basis.

With regard to Specialty's contention that the agency improperly exercised an option under Halsey's contract, the RFP specified that the acquisition was a multiyear negotiated procurement and cited provisions of FAR Part 17 relating to the multiyear contracting method. Further, since neither the RFP nor Halsey's contract include or make reference to option solicitation provisions or contract clauses, we also will not review the agency's actions on that basis.

Therefore, this Office lacks jurisdiction to decide the protest and the protest is dismissed.

Michael R. Golden

Ronald Berger
Associate General Counsel